

COALITION FOR INDIAN HOUSING AND DEVELOPMENT



Testimony of Chester Carl, Chairman Before the Senate Committee on Indian Affairs

NAHASDA OVERSIGHT HEARING FEBRUARY 13, 2002

On behalf of the Coalition for Indian Housing and Development, and its sister organization, the National American Indian Housing Council, I would like to thank Chairman Inouye, Vice Chairman Campbell, and other members of the Committee for holding this hearing today. I would also like to take this opportunity to express my appreciation, and that of the entire organization, for the work this Committee has put into supporting Indian housing issues.

The Native American Housing Assistance and Self-Determination Act is still a young program, but already we are seeing its potential. Beyond my capacity as Chairman of CIHD and NAIHC, I am also CEO of the Navajo Housing Authority. It is unquestionable that NAHASDA-funded programs on the Navajo reservation have been successful in providing better housing for Navajo families. It is a program that has tripled production in its first year with increasing numbers in each year of funding. This is the result of a major effort from the Navajo Nation in parallel efforts to implement private financing and economic development. I have seen the same in many other Indian communities across the country.

NAHASDA addresses the specific needs of tribes and has gone far in defining the government-to-government relationship between Indian tribes and the United States government. Based on this unique relationship, NAHASDA outlines ambitious goals to provide tribes the tools to be more creative while also encouraging flexibility in providing housing services to tribal members. The Act prompts tribes to accomplish clearly stated goals to reduce the housing need and to open the housing market to neglected people. It further encourages the involvement of private entities rather than simply spending federal funding. Unfortunately, as the years have passed since enactment, these lofty goals appear to have been limited by the continuing burdensome oversight of HUD, the creation of HUD impediments not authorized by NAHASDA, and inadequate appropriations.

The Coalition for Indian Housing and Development respectfully requests Congress to reaffirm its commitment to NAHASDA and tribal sovereignty through reauthorization. It is vitally important, however, that Congress include in its reauthorization language clear guidance to HUD and federal agencies that implementation of Indian housing programs be conducted in a manner that unequivocally supports tribal self-government.

INSPECTOR GENERAL AUDIT OF NAHASDA

In August 2001, the HUD Inspector General released its report on a nationwide audit of NAHASDA [2001-SE-107-0002]. The purpose of the audit, as stated, was “to determine if NAHASDA recipient performance is consistent with the Indian Housing Plan and if the Housing Entities efficiently, effectively, and economically provide affordable housing.” The general outcome of the audit is that, “Overall, tribes have successfully implemented NAHASDA.”

The audit goes on, however, to say that the audit discovered “significant concerns that HUD needs to address.” By and large, the rest of the audit discusses how poor management by HUD’s Office of Native American Programs (ONAP) has resulted in problems in implementation. ONAP’s response is that NAHASDA places accountability on the tribes, not on ONAP, and that ONAP’s role is one of monitoring and dealing with noncompliance.

CIHD agrees that this is what ONAP’s role should be, but we disagree that is what they are now doing. First of all, we would like to see HUD develop uniform policies and treatment for tribes of all regions. Second, we agree NAHASDA places accountability on the tribes and we willingly accept that burden, but despite its implication to the contrary, ONAP inefficiently over-regulates the program.

We support the findings of the OIG Report and will do our best to aid in making the necessary changes. We hope that the Committee will take the report as a guide in working with HUD to more effectively implement NAHASDA.

STATUTORY ISSUES

There are several specific areas where we would like to make recommendations for statutory amendments to NAHASDA. The first is in dealing with program income.

PROGRAM INCOME

CIHD urges the enactment of a technical amendment to NAHASDA that would allow more flexibility in defining program income. Currently, HUD views any income or revenues, no matter how remotely related to the expenditure of federal funds, as program income. The tribes are required to track program income and financially account for these funds without any sunset and further there is not an accounting function that supports this requirement. This causes a severe disincentive for Indian Housing Authorities, TDHE's and tribal governments from exploring creative and imaginative housing and finance initiatives.

To illustrate, the Navajo Nation is implementing a mortgage concept program in the place of the traditional HUD Mutual Help homeowner program. Our aim is to use NAHASDA funds for a portion of construction financing and assist families in obtaining a conventional mortgage to repay construction costs including the NAHASDA portion. It is undisputed that federal restrictions often cause lengthy delays in construction and increase construction costs. It should be our goal to ensure that the maximum amount of funding be defined as unrestricted which in turn will reduce the cost of housing. In other words, once NAHASDA funds have served their initial purpose, and an IHA, Indian nation or TDHE is able to generate revenues or income in subsequent transactions, those funds should lose their federal character and be unrestricted.

NAHASDA was intended to enable Indian tribes to administer housing programs consistent with self-determination and self-governance. Accordingly, NAHASDA funds should be considered seed money for tribal housing programs. Current HUD restrictions serve no other purpose than to hinder future development.

NEGOTIATED RULEMAKING

NAHASDA legislation obligates HUD to follow a federal statutory negotiated rulemaking process in developing regulations to implement NAHASDA. HUD has taken the position that this is only a one-time requirement to be used for the establishment of implementing regulations. CIHD believes that in accordance with the statutory provision and the Congressional findings of NAHASDA, this is an on-going requirement for all new regulations.

Consistent with tribal self-determination and self-governance, tribes proposed the use of the negotiated rulemaking process with the appointment of 48 tribal representatives, not 18 as in the HUD plan, for the purpose of reworking the

NAHASDA distribution formula. The negotiated rulemaking process requires appointment of an adequate number of representatives that reflect a broad spectrum of Indian tribes. With over 550 federally-recognized Indian tribes in the United States, 18 representatives picked by HUD is inadequate and is inconsistent with the government-to-government relationship.

Furthermore, HUD is appointing tribal representatives based on criteria that are not defined, such as the definition of a small tribe or the definition of a geographic area. The tribe's chosen selection process, using 48 tribal representatives should be used in any future negotiated rulemaking effort.

CIHD requests the inclusion of an amendment to NAHASDA that clearly states negotiated rulemaking be used for all new NAHASDA regulations. The negotiated rulemaking successfully worked with the development of new rules when a draft of NAHASDA regulations were produced in ninety (90) days, but it took HUD almost year to clear the rules.

IMPLEMENTATION ISSUES

It is my understanding that today's focus is not so much whether to reauthorize NAHASDA, but to focus on how NAHASDA is being implemented and what improvements can be made. With that in mind, I submit the following concerns.

TRIBAL CONSULTATION

In July 2001, tribal representatives and HUD officials met in St. Paul, Minnesota, for the purpose of consulting with HUD on issues related to NAHASDA. Although CIHD appreciates HUD's effort to develop a Consultation Policy, we find the policy does not support the intent of NAHASDA and marks a backward step in our efforts to address Indian housing needs. The HUD policy essentially says that HUD will decide what issues will be subject to consultation with tribes, and provides for what appears to be minimal input from tribes on the issues. HUD alone will consider proposed solutions and they will decide how to develop or implement new policy or regulations. This is directly contrary to the wishes of the tribes and significantly weakens the progress made by tribes in convincing the Administration to in fact strengthen the consultation process, as indicated in Executive Order 13084.

The intent of NAHASDA, as outlined in 25 U.S.C. 4101, requires that, "Federal assistance to meet these responsibilities should be provided in a manner that recognizes the right of Indian self-determination by making such assistance available directly to Indian tribes or Tribally Designated Entities under the authorities similar to those accorded Indian tribes in Public Law 93-638." HUD, in its internal decision-making and consultation approach, has not supported the above intent, but rather continues to micro-manage tribal housing programs.

The Executive Order dated November 6, 2000, requires all federal agencies to “establish regular and meaningful consultation and collaboration” with tribes, and to “grant Indian Tribal governments the maximum administrative discretion possible” with respect to federal statutes and regulations administered by tribal governments. The Order further encourages tribes to establish their own standards and policies to achieve program objectives, but most important to CIHD, the concept of negotiated rulemaking is encouraged. In contrast, HUD’s use of consultation is contrary to these fundamental principles.

ENVIRONMENTAL REVIEW PROCESS

CIHD requests coordination of environmental review requirements among federal agencies by establishing a lead agency. We submit that NEPA requires the federal agencies to designate a lead agency when there are multiple funding agencies and that the other agencies are required to accept that agency’s environmental review process. We feel this is an important issue because projects requiring multiple environmental assessments because of multiple funding sources hinder construction progress.

Another problem in this area is cost. HUD should receive additional funding to conduct environmental reviews within the HUD budget. Large amounts of NAHASDA funding are being expended for this purpose, even for minor renovation to housing units. This unfunded mandate should be eliminated or properly funded.

STAFFING FOR THE OFFICE OF NATIVE AMERICAN PROGRAMS

When the HUD Office of Native American Programs was established with a Deputy Assistant Secretary responsible for all Indian housing programs at HUD, the former HUD Secretary found the position warranted a Senior Executive Service ranking, even though it was authorized as a GS-15 position. Recently this position was advertised as a GS-15 career position with requirement of only one year of experience. CIHD views this as a downgrade in the position, even though it was originally a GS-15. Meanwhile, this position has been given additional responsibility for conducting government-to-government relations as well as oversight of the new Native Hawaiian Housing Block Grant program.

CIHD believes the DAS position should be raised to an Assistant Secretary position. The unique nature of Indian housing as opposed to public housing, as well as the need to work with the principles of tribal sovereignty and the government-to-government relationship, place Indian housing in its own category needing the authority to have direct contact with the Secretary.

I would also like to address the issue of staffing in the regional HUD ONAP offices. Tribes receive little or no guidance and technical assistance from HUD field staff because they claim they are severely under-staffed. Although it has been a

problem for some time and is no secret to anyone, HUD has made no effort to fully staff these offices with trained, competent employees.

NAHASDA APPROPRIATIONS SET-ASIDE FOR HUD

For the past five years, set-asides have been taken from NAHASDA for special HUD programs without any consultation with tribes. Often the set-asides are not successfully implemented or the programs duplicate other existing programs. Such is the case for \$5 million set aside each year for HUD to provide technical assistance and training for tribes. It is disheartening to see \$5 million spent on HUD conferences many tribes cannot afford to attend when this money could have been spent providing shelter to an Indian family. We are simply not seeing enough training and technical assistance benefit to justify this cost. It is true that NAIHC also receives funding for training and technical assistance, but much of this is provided free of cost, and in the case of technical assistance we go to the tribe rather than having the tribe come to us.

CIHD urges Congress to review the funding of these NAHASDA set-asides to determine whether they are necessary and if the unused funds may be carried over to the current funding year for immediate use in affordable housing activities.

HUD SECTION 184 PROGRAM

The Section 184 Loan Guarantee Program must be streamlined. Tribes have found the program too complex and families often experience delays in trying to comply with requirements such as the environmental reviews. We are now seeing cuts in the program, as with the President's fiscal year 2003 budget, because it is not being used. The solution is making the program more user-friendly.

Most Native Americans historically have not had access to credit, or at least to credit that is acceptable in practice off the reservation. Some of CIHD's recommendations are to accept down payment from any source, allow outstanding collections to be converted to a payment program, and include this in the debt ratio. Also, allow families to participate as long as judgements are paid and other derogatory issues are current in the last six months, and provide a lease-to-own option where twelve months of satisfactory payment may be converted to a mortgage. This option may also include participation of families who have a high debt ratio. For example, open Section 184 participation for families at 65% debt ratio in a lease-to-own program and have families qualify for a mortgage at 48% debt ratio. The Section 184 program may be further improved by allowing underwriting for multiple state jurisdictional areas rather than the restriction to one state.

INDIAN HOUSING PLAN AND ANNUAL PERFORMANCE REPORT

HUD recently modified the Annual Performance Report (APR) format for NAHASDA. The report format, however, is still not consistent with the requirements of the Indian Housing Plan (IHP). Further modification is required to have the APR report

on the actual progress of the tribe's goals as set in the IHP. Furthermore, the report format should be in simple terms that can be understood by the public and the tribal leadership. The report in its current form is complex and can only be understood by people that work with the program every day.

CONCLUSION

In conclusion, we appreciate the Committee's attention in addressing these important issues that hinder economic and housing development opportunities on Indian reservations. We are confident that together our efforts will result in direct benefits to the American Indian nations.

Indian housing is at a crucial stage, with many of the housing problems that have long plagued Indian communities still unresolved. The passage of NAHASDA has given tribes incredible opportunities, and with adequate funding and proper implementation, NAHASDA can be the most important tool in building sustainable, healthy communities in Indian Country.

I am pleased to answer any questions you may have.